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THE RELATIONSHIP BETWEEN CITIZENSHIP RIGHTS AND JUDICATURE AND JUDICIAL SECURITY IN IRAN

Kurosh SIRI

MA of International Rights, Islamic Azad University, Chalous, Iran.

Email: korosh.siri.1396@gmail.com

ABSTRACT

The present study aims at investigating the concept "judicial security" as a fundamental human right as part of a larger citizenship right that has to be attended by the judiciary. Therefore, the study tries to analyze and evaluate the concepts, principles and the regulations related to citizenship rights. Thus, firstly, we need to define security so as to use it as a premise for defining the judicial security. Judicial security is an immunity that is obtained as caused by securing fair and just trial principles and structures as well as by independent and unbiased judges. Fair and just trial is per se enumerated inter alia the rule of law principles and therefore the way the rule of law and its necessities are viewed by the judiciary, such as safeguarding the justice and impartiality of the high-ranking judicial authorities, have also been taken into consideration. Next, the requirements of fair trial in line with actualization of judicial security, such as the law-centeredness of crime investigations and punishments and the parity before the law have also been taken into account.

Keywords: *Citizenship Rights, Security, Judicial Security, Fundamental Rights and Liberties, Rule of Law*

INTRODUCTION

The present study deals with the evaluation and investigation of judicial security as an example of citizenship rights such as the judicial system's rule of law, fair trial and its necessities as envisioned in discussions on judicial security and the citizenship rights' stance before the judiciary.

It appears that the judicial security not only is not a procedural right against the substantive rights but also the actualization of the substantive rights is conditioned on the identification and safeguarding of the procedural and judicial rights. The judicial security right is comprised of a constellation of procedural and judicial rights without the attainment of which the judicial security and citizenship rights' actualization is not viable.

There are questions raised in this regard that answers will be found to them in the following sections. They are:

- 1) How citizenship rights are conceptualized?
- 2) How security and judicial security are conceptualized?
- 3) What are the government and judicial system's requirements in line with the actualization of the judicial security as the citizenship right?
- 4) Is the judicial security a fundamental human right and amongst the citizenship rights?

Paragraph 1-Social Rights Conceptualization:

Social rights, in a bound sense, refer to the rights that are possessed by individuals as members of the society and/or as part of their personal or occupational activities and/or via utilizing their

assets in the community such as the ownership right, business right, industry and commerce right, the freedom of work and job and so on.

Undoubtedly, the aforementioned rights are supplements to the freedom and bearing such titles they should be recounted as examples of freedom but in the sense that their economical and social effects within the society transcends beyond the hedges of the individual freedoms and they might possibly cause abuses and injustice, therefore the authors prefer to study them under the broader social right title due to their being more important and more extensive. The title encompasses such topics as work and working systems, ownership system and administrative-economical rights and so forth.

In a broader sense, social rights incorporate a series of rights that are realized for an individual in order to block the way to the social and economical injustices and these injustices stem from the economical and social conditions governing the society and the environment wherein the individual strives.

As it is written by Bordeaux, a Paris University professor, “an individual, before being a citizen, is a farmer, a laborer, a merchant or a physician. All these jobs and activities place the individual in certain economical and social conditions and in a guise as a result of which requirements and pressures are imposed on him or her. The requirements may be economical and/or social and/or syndicate-driven and/or for instance the discriminations and the oppressions that are occasionally imposed on the women by the men that if the individual is not effectively supported by the government then her freedom and rights will be wasted and/or at least maimed while freedom rules that the individual should be freed of such bounds, requirements and impositions and injustices and this not possible unless the government shoulders positive commitments towards the individuals that are known as social rights. Social rights like the individual’s rights and freedoms result from the expediencies of the human nature and they are necessary and critical quite the same way that the individual rights are and they both provide the individual with the ability to get freed of injustices”.

As it is observed, the social rights both in this latter sense and in their previous meaning, move well beyond the individual rights and traditional freedoms and they encompass a series of fundamental social and economical issues within the society the resolution of which without an extensive and precise social and economical planning and exertion of effective support by the government is infeasible.

Based on what was said, social rights, in their universal sense, include two types of rights: certain rights with economical contents like the proprietorship rights, freedom of business, industry and commerce all of which we study under a general title of economical rights; the other incorporates a series of positive commitments that are shouldered nowadays by the governments in the advanced communities respective to the nations such as providing employment for all, improving the laborers’ work and life conditions, social security, food, accommodation, welfare and hygiene for everyone all of which we explore under a general title of social rights.

The objective of the economical rights is setting up a private ownership system for land, commercial and industrial institutions (production tools) and establishing a correct order in economical affairs, whereas the objective in social rights is arranging the social-life relations and elimination of the injustices existing in this regard.

Conceptualizing Security:



Security has been defined differently; security means that an individual should not be psychologically and bodily harassed at present and in future. The individual should not feel frightened and hassled. The followings are but some definitions provided for the term “security”: Security literally means being immune, feeling safe, comfort and tranquility (Amid, 1963, p.156).

“Security is the peace of the mind based on which the individual feels no fear and harassment regarding his or her life, honor and material and spiritual rights in the society s/he is residing” (Hashemi, 1996, p.441).

Security is not only a value and favorable in itself rather it is a means for reaching other optima as well (Kazemipour, 1996, p.76).

“Literally, security means not being threatened or attacked” and/or it is recounted as “the preparedness for confronting any threat and attack”. In political and legal terms, security is usually applied in the form of “individual security”, “social security”, or “international security” (Ashouri, 2002, p.38).

Security is occasionally interpreted as keeping immune and safe of something of an abusive and assaulting nature and it is sometimes described as attaining conditions under which the citizens are kept safe of the government’s threats, including both potential and the actual ones (Hashemi, Ibid).

The scholars of politics translate security as the survival and safeguarding of the national government and the experts of international relations have downgraded security to an immunity of the government from the various nuclear bioenvironmental and terroristic threats. In their definitions, the subject “national government” is of a greater concern than the predicate “security”. With all these explanations, the accurate meaning of the term “security” should be specified devoid of any influence by the identity of the definers and apart with the use of any identifier and adjective so that the stance of security could be determined within the format of a sociological or psychological phrase or a combination of words (Mandel, 2000, pp.44-47). In this way, it can be stated that security means “having the possibility and optimum and favorable position for establishing symmetric and balanced relationships aside from any encouragements and discouragements by the individual and the society parallel to the satisfaction of the individuals’ needs and supplying their interests”.

“Securus” is the Latin root of the term security which literally means having “no worries and concerns” (Nasiri, 2002, pp.114-115). With this recent definition, a major part of the individual, group and social behaviors find a security nature because no single behavior is devoid of risk and agitation and absolute confidence has no room here (since the human behavior and volition cannot be completely controlled) and of course not desirable (because absolute confidence and security deprive the society of its dynamicity) (Davary, 2008, p.33). Now, the importance of the security in the society to the citizens can be discerned because a substantial part of security and insecurity is defined in the social relations and public area and an individual cannot be alone considered as the subject and at the same time generator of danger and risk. In fact, the existence or absence of danger can be predominantly understood within the social relations and in respect to the citizens, though there might be talks of security against the natural and unexpected incidents that is beyond the scope of the present study.

Essentially, security is a perceptual and emotional phenomenon, i.e. the general public masses, statesmen and the decision-makers should make it sure that there exists the required security



for the continuation of a life free of concerns. Although, some believe that it is not possible to determine the degree and the rank of the required security (Ibid, p.117).

Generally, paying attention to security and the law for the actualization of social justice is enumerated as the essential pivot of the political thinking history. Plato in his great many of works seeks for an ideal society (utopia) in which the entire array of people enjoy security. He is of the belief that a force should not be allowed both in an individual and in a society to overcome the other; because, this paves the way to decline and destabilization as a result of which the security will be lost, so, in order to safeguard social security and welfare, one should be equipped with the weaponry of science and wisdom (Parvaz, 2001, p.6-7). Aristotle is known to have urged the establishment of order, comfort, security and the enactment of temperate regulations in the society. He believes that bourgeoisie, capitalism and extreme accumulation of wealth will make one to have immoral offspring and block the road to the reconstruction and establishment of security (Ibid, p.8).

The other philosophers and social thinkers, since the ancient era till 18th century, each, in a way or another, have underlined the issue of safeguarding security and its necessity in line with the actualization of justice and precise and accurate fulfillment and enforcement of the rules and regulations (Ibid, p.9). Jean Bodin, the French theoretician, knows security as a splendid gift and believes that an individual's freedom of enjoying his or her properties is realized in the real freedom perfection, to wit security (Montesquieu, p.434). Jeremy Bentham, the famous English philosopher, is also of the belief that security is the first useful principle in the search for rights (Katouziyan, 1994, pp.5-6). Kolsen, as well, believes that rights constitute the "security system". This way, "in the legal system, security is a sublime goal and not a means" (Ibid, p.7).

The security and the necessity to establish security are so important that there is made a lot of emphasis in a great many of the conventions, pacts and international declarations, e.g. European Convention on Human Rights and the International political-civil right treaty, on the establishment of security and its preservation and support in various aspects and they all enumerate it as the duty of the states. It seems that the security conceptually can be divided from various perspectives: the first holds that the security is a psychological issue bearing the idea that the individuals should not feel abused and endangered mentally and psychologically within a society. In this sense, any factor giving rise to the disordering of the peacefulness of the minds and the individual and social stabilities is considered contradicting the security. The second is that, sociologically, security is considered as a state or a situation based on which the tensing and disordering factors disrupting the social order should be attenuated or eliminated. The third introduces security as a legal phenomenon conveying the idea that security is per se a sort of right that is used by individuals in line with enjoying some sort of immunity against the government's actions or the actions by the other individuals and social groups and the legal system is obliged to take measures so as to guarantee such a right and immunity for the citizens.

Judicial Security Conceptualization:

Judicial security is a state in which the prestige, life, personal possessions and the entire array of the humans' material and spiritual affairs are supported by the law and the judicature. To create such a state, there is a need for observing certain radical indicators thereby to accomplish the judicial security goal, to wit achieving judicial justice. It is the duty of the government and the judicature to safeguard such a fair security for everyone and treat everyone equally based on the law.



It seems that respecting the law and adhering thereto is the first prerequisite of the society's stability and creation of order and social and individual security. Long-term planning for the purpose of creating change and growth and paving the way for them is only feasible in a society that it is the law, order and security, stability and hope to the future and mutual trust that rule. Judicial security is formed when the trial principles and procedures fairly guarantee the material and spiritual rights of the society members. In fact, fair trial is per se an underlying human right that warrants the authenticity, efficiency and healthiness of a country's judicial system and this way, besides perfect observation of the judicial rights, the judicial security can also be supplied (Kalantariyan, 2001, p.32). In fact, the judicial security can be created when the plaintiff and the defendant both feel sure of the enforcement of their entire judicial rights and the absence of their wastage after referring to a judicial system and the judges from the courts of justice in their exertion of common trial principles and procedures. It is only in this way that an optimal situation can be envisioned for the judicial justice.

It is for the same reason that the citizenship rights, as specified in the judicial rights domain, encompass those of the rights that an individual should enjoy in encountering the judicature and the judicial trials. Some of these rights are: the right to have a lawyer, the right to be informed of the accusation title, the right to immediately attend to a judge or a qualified judicial court, the right to hold a trial on a proper time and so on. If such rights are seen enforced based on the fair trial's principles, regulations and procedures, like presumption of innocence, the principle of the legality of trying a crime and sentencing a punishment, the principle of prohibition of ex post facto law and so forth they will be accompanied by judicial security for the society members parallel to the actualization of the citizenship rights.

Rule of Law and Judicature Governance:

Rule of law is one of the crucial political and legal principles. The common trait of the rule of law concepts and theories is summarized in the point that based on the rule of law, the despotic and arbitrary use of power in making governmental decisions is rejected and prohibited (Zare'ei, 2001, pp.51-67).

It is understood from the concept "rule of law" that:

Firstly, in line with full-scale safeguarding of the nation's rights, everyone should be able to refer to a qualified court based on the law. In this sense, no single individual of a nation differs from another before the law. Secondly, the judicature, in general, and the judges from the courts of justice, in particular, should themselves be obedient to the law and be encircled in the inclusion circle of the rule of law. Thus, the courts' verdicts should be documented and based on the articles stipulated in the law and the judges are obliged to avoid approving the enactments and the procedures that are contradictory and opposite to the Islamic rules and regulations and it seems that the rule of law principle in its actualization of the citizenship rights makes it necessary for all the society affairs to be based on rules and regulations, general or specific, so that based thereon, the entire people can, on the one hand, enjoy identical rights and obligations and the governmental affairs, on the other hand, be fulfilled from the venue of the law thereby to safeguard the citizens' peace of the mind. In fact, the rule of law is closely connected to judicature parallel to safeguarding the judicial security. Attainment of the fair judicial security by the entire nation, as an essential duty of the judicature, can only be fulfilled when the judges from the courts of justice play their roles via adhering to the legal stipulations and take appropriate actions in line with the actualization of the individuals' judicial rights and secondly, they



themselves obey the rules and regulations and be indictable in case of perpetrating violations (Zare'ei, 2008, p.18).

- ***The Principle of Judicature and Justice Department Judges' Independence:***

The country's judicial system is commissioned to support the individual and social rights and this necessitates unrelenting efforts by the country's judicial system in guaranteeing the individuals' rights and the public rights and trying and punishing the offenders to the public and individual rights. Judicial independence depends on the existence of the judges that are not influenced and controlled in return for political interests. These are unbiased to the parties of a law case and serve justice impartially and make unprejudiced decisions regarding the fundamental legal and constitutional values in the judicature, as the authority for legal setting of the government and the state's behavior (Larkins, 2002, p.44). This way, the judicial independence is safeguarded when the judges cannot be replaced or changed easily after being appointed (or installed) and are not found mentally, materially, spiritually or even religiously affiliated with and attached to any political group, party or wing and in their trying of a case, enforce the law based on the general rules in an unbiased manner without any inclination to any specific political stance.

Therefore, the most important indices of judicial independence are: the judges' non-affiliation to the various political groups and parties, adherence to the impartial trial principles and acting within the framework of the regulations. Of course, it is worth mentioning that safeguarding the judicial independence can only be accomplished when the judges and the magistrates could necessarily be provided with the freedom of action and proper material and spiritual warrants. It means the judges should be able to freely and without being subjected to any internal, external, political and occupational pressures and influences perform their duties (Zare'ei, 2008, p.19).

- ***The Right to Have Access to the Qualified Courts:***

The entire men and women of the society should indiscriminately and identically enjoy the right to have access to qualified courts. The superfluous delay in the trials and the extravagant costs of the judicial trials make the enforcement of even the finely carved rules impossible and render them mere soulless words. It has to be noted that the qualified court and the judicial security are always concomitant. In fact, it is not the case that the sole access to the qualified courts can provide the individuals with the fulfillment of their rights rather the issue that appears to be of an extraordinary importance here is the access to the qualified judicial courts and this qualification is specified as ruled by the law. In fact, the law should not only specify the example cases of the crimes and punishments but it also should determine the qualities of the courts exercising the rules of procedure because the quality of the court and the way they treat the law cases as well as the rights they grant to the culprits are quite as important and effective in the safeguarding and guaranteeing the judicial security.

The observation of such principles as the ancillary principles and means of rule of law alongside with the aforementioned pivotal and basic principles are inter alia the factors influencing and provisioning the judicial security. The warrants of the rule of law in respect to the judicature in Iran embrace all the legal mandates protecting the rule of law pertinent to the abovementioned provision. Generally, two administrative mandates can be enumerated in this regard: legal (right) administrative mandates and political administrative mandates (Zare'ei, 2008, p.21).

- ***Legal Administrative Mandates:***



It seems that legal administrative mandates, derived of the context of law, constitute a group of mandates that possesses a legal nature as well by law and handle the guaranteeing of the rule of law enforcement in the judicial system through adopting an approach based on legal principles and regulations. This way, the role of the administrative court of justice, the head of judicature's obedience to the law and the civil liability of the judges can be underlined as cases originating from the Constitution.

- *Head of Judicature's Obedience to the Rule of law:*

One of the essential duties of the head of the judicature is “employing just and competent judges and their installing and dismissing and changing the service locality and determination of the jobs and promotions and other responsibilities of the like in the administrative affairs corresponding to the law”. Based thereupon, the head of judicature should, first of all, take the previously mentioned measures within the framework of the law and secondly he himself has to follow the regulations. Based on Article (2) of the law, the duties and authorities of the judicature, passed in 1999, the presidency of the judicature is a judicial position and whenever the head of judicature in his inspections finds a sentence issued by a court against the canonical rules, he can refer the case to another qualified court. It seems that with such a stipulation, the principle of the judged case's credibility and the public order principle in revisional trying as well as the decisiveness of the courts' sentences and the role of the country's Supreme Court as a high judicial institution unifying the judicial system are vitiated. The head of judicature issues an order and a circular to declare indispensable the adherence to his judicial rulings and any violation thereof can therefore be referred to the disciplinary court of the judges. These undertakings seem to be explicitly against the rule of law.

Based on the Act 158 of the constitution, “the dismissal and installation of the judges”, as well, have been realized as the duties of the head of judicature by law. A judge cannot be permanently removed of his office without first trying him and proving the crime or violation that has set the grounding for his deposition; moreover, a judge's place of service cannot be changed without his consent unless it is deemed expedient in regard of the society or it is willed by the head of judicature ...”. The dilemma residing in these two principles is that whether the head of judicature can be granted the duty of dismissing and installing the judges within the framework of the law or whether the deposition and installation of the judges should be ruled in qualified courts by the decisive verdict of the authorities ruling them? Furthermore, if, based on Act 158 of the Constitution, the dismissal and installation of the judges is amongst the duties of the judicature head and it has to be carried out corresponding to the law, why is the Act 164 of the Constitution positing the “society's expediency discernment” by the head of judicature?

In answering to the abovementioned ambiguities, the Guardians Council, issuing an interpretive idea, asserts that “the exception inserted in the Act 164 of the Constitution (stating unless it is deemed expedient to the society by the head of judicature after counseling with the country's head of Supreme Court and the attorney general) solely incorporates the second sentence of the Act, i.e. the phrase ‘... or who has changed his place of service without his consent’ and thus having nothing to do with the opening sentence”. Therefore, the head of judicature can only dismiss or deposition the judges when there is proved a crime perpetrated by them in a qualified judicial court and after the crime was evidenced in the court then the head of judicature takes such measures as dismissing the judge.



In spite of the interpretive elucidation offered by the Guardians Council, it can be inferred that “the judges’ independence”, still an authority granted to the head of judicature, stemming from the latter part of the Act 164, is vitiated and this pitfall still persists. Besides, the Paragraph (B) of the Article (1) of the head of judicature’s responsibilities and duties, enacted in 08/03/1999, the transferring of the judges to the counties that are faced with intense shortage of the judges, in case of expediency and without adherence to the law on the judges displacement and disregarding the general criteria specified in the law, is an explicit breach of the Act 164 of the Constitution.

This is also noteworthy that the law on the judicature’s responsibilities, approved in 26/10/1988, had specified the judicial duties of the High Judicial Council members’ responsibilities by means of which trying their infringements had to be attempted in a disciplinary court. Amending the Act 156 of the Constitution that provided for the concentration of the judicial authorities in the hands of the head of judicature led to a higher ambiguity and dilemma of the head of judicature’s position. More importantly, where the law on grants the responsibility for the formation of a high disciplinary court for trying the judges, enacted in 23/11/1991 by the national exigencies discernment council, to the head of the judicature and the other members are also to be installed by him, how can it be expected to try the violations by the head of judicature and how can a judge be considered independent under such a structure and subjected to the internal pressures of the judicature (Zare’ei, 2008, p.20).

- ***Publicity of the Trials and the Civil Liabilities of the Judges:***

Publicity of the Trials and the Civil Liabilities of the Judges:

Observation of the principle of the trial’s publicity can, on the one hand, cause the general public to become familiar with the judge’s way of conduct in judicially trying a case and on the other hand the judges find themselves always acting before the general public eyes as a result of which they will be encouraged to exercise more attention and precision in issuing judicial verdicts and sentences. Therefore, “the trials are all public in the Islamic Republic of Iran and the individuals are allowed to attend unless the court realize it contradictory to the public order and chastity or in such cases as private lawsuits the parties to a claim demand the trial’s holding behind the closed doors”. In this regard, “trying the political crimes and press infringements are held publicly with the presence of jury”.

In this regard, several issues have to be expressed: firstly, in trying the political crimes, the constitutional legislator was expected to, meanwhile defining the political crimes, determine the general criteria and scales, the general procedures and the way the jury members are appointed. Secondly, the judge has been granted with the duty to decide the court’s publicity or otherwise and it seems that this contradicts the rights and freedoms because besides limiting the public thoughts’ supervision of the judge’s performance, it causes the exertion of different procedures by the judges regarding the recognition of public trial’s contradiction to the public order or public decency (Zare’ei, 2008, p.26).

Also, based on the Act 171 of the Constitution, “whenever the judge’s fault or mistake in a subject or in a sentence or in finding the verdict’s correspondence to a specific case causes an individual to be incurred with a loss, material or spiritual, the judge, if being found guilty, is to be held liable corresponding to the Islamic regulations otherwise the loss has to be compensated by the government and the accused will be tried for a case of restoration of prestige be it any of the



cases mentioned above". This principle is an important step taken in line with the exertion of rule of law and safeguarding the judicial security.

In fact, quite similar to the necessity for the judge's being free of any worry and concern to independently try and resolve the disagreements and enmities as well as his being free from any sort of possible suing in trying and sentencing a case, it has to be also taken into consideration that the judges are also prone to default and guilt and they might perform in such a way that instead of preserving the nation's rights abuse the righteous rights of the individuals and groups and resultantly expose the people's security to greatest of the threats. Hence, the judges cannot be viewed as absolutely immune to the faults rather liabilities have to be specified for them under certain circumstances thereby to prevent the citizens' rights from being wasted while the rule of law is guaranteed and the judicial security is ensured simultaneously (Jalilvand, 1994, pp.94-950).

The constitution knows the government responsible for compensating the losses that are sustained by the people as a result of the mistakes made by the judges. Such a strategy by the legislature in the form of holding the government liable to the civil harms of a judge seems to be an appropriate solution for achieving fair judicial security as intended by the Constitution. However, a study of the judicial procedures in this regard is indicative of the judiciary's adherence to this principle. Regarding the nature of the trials and considering the idea that the judge is an individual having no knowledge (of the claim's whereabouts) and mediating between two knowledgeable individuals (the parties to the claim), mistakes can be expected from the judges in a great many of the cases that bring about the grounds for harming the two claimants (Jalilvand, 1994, p.101). In this case, the compensation of a loss, that is solely resulted from the nature of trial (and not the judge's mistake), is conducted by the government holding the idea that the judge has only been commissioned to enforce the rules and regulations and in this regard s/he is a member of the administrative force of the government.

Fair Trial and Judicial Security:

To actualize the judicial security, there are two things necessary, the right to claim and the freedom to defend.

The right to claim means that anyone finding oneself deprived of a right can refer to a qualified authority and file a lawsuit and the freedom to defend means that the entire individuals against whom there is made a claim can freely make use of any legal ways to defend their own selves. Generally, it can be stated that some of the fundamental principles should be insured by the judicial system to create judicial security and penal justice within a community. The following sections investigate the most important of such principles.

- ***The Principle of Legality of Punishments and Crime Trial:***

Inferring from the Act 169 of the Constitution, doing an action or leaving an action undone can be considered crimes if they are recognized as crimes in the statutory provisions and the punishments that are sentenced for the individuals should be exactly corresponding to the law and issued by qualified courts. The principle of legality of punishments and crime trials has been pointed out in various articles of the ordinary regulations and variegated acts of the Islamic Republic of Iran's constitution. As an example, Act 32 of the Constitution stipulates that "nobody can be arrested unless by a writ of arrest or as outlined in the law".

And/or in the Act 22 of the constitution it is stated that "the honor, life, personal possessions, rights, accommodations and occupations of the individuals are immune of any abuses unless



otherwise is prescribed by the law". Also, Act 33 of the Constitution expresses that "nobody can be expelled from his or her place of residence or prevented from dwelling in his or her place of interest or urged to live in another location unless in cases specified by the law". In Article (2) of the Islamic penal code of law, as well, it is introduced that "any taking of an action or leaving an action undone for which punishments are specified in the law is a crime".

In addition, corresponding to the axiom "no punishment except in accordance to the law", nobody should be punished for the perpetration of an action that is not specified as a crime. Based on the axiom "the permissibility of taking any action not forbidden by law", everybody is granted the right to take possession of any property and perform any act unless in cases prohibited by the law. Thus, if we doubt the permissibility or impermissibility of an action, performing it is lawful and the perpetrator is not punished (Validi, 1993, pp.237-238).

This latter principle alongside with the other stated rules guarantee the sort of rule of law that has to be practiced by the country's judicial system.

- ***The Principle of Restrictive Interpretation of the Penal Codes:***

The principle of restrictive interpretation of penal code of law stems from the legality of the punishments and the crime trials Act. Based on a definition, the restrictive interpretation is "a sort of judicial interpretation as a result of which the purport of a law is constrained within the framework of its concept and any contagion of it to the cases for which a silent position is held (or to the cases that it might possibly be include) is avoided and thus the penal code of law should be restrictively interpreted. Also, restrictive interpretation is applied in the rules pertaining to the claim justification proofs and the legal structures and the civil liability" (Ja'afary Langerudi, Ibid, p.173). The objective of the Act is to prohibit the judge from acting as a legislator so that the individuals' freedom could be jeopardized. The difference in the penal rules and civil rules lies in the same issue because in the civil issues the judge has to issue a verdict for every case according to the spirits of regulations and the "evident common laws and habits" and this is a major difference between the civil issues and civil arbitration with the penal issues and criminal arbitration (Sane'ei, 1997, p.116).

- ***The Principle of Trials' Publicity:***

The principle aims at increasing the people's trust in the judicature and warning the individuals who are seeking to perpetrate crimes. With the public holding of the trial, the arbitration would enjoy a larger deal of healthiness and then there would be made more preps for attaining judicial security. As it is underlined in the Act 165 of the Constitution, the trials are predominantly to be held publically unless otherwise is ruled as exceptions.

Generally, it can be stated that the objective in publicizing the trials is to have the people supervise the trial so that the judicial system can be prevented from deviations. It seems that the Note (1) to the Article (188) of the Criminal Procedure that does not allow the dispersion of the trial course before absolute decisions are made about the case is a violation of the principle stipulated in the constitution because the trial whereabouts will be compulsorily reflected with the presence of the individuals in the trial session and this is contradictory to the principle of the transparency and publicity of the judicial trial process.

The principle of the trials' publicity is a necessary rule for a fair trial. Thus, in order to reduce the possibility to misuse the judicial authority, the cases and examples of the public order or the public security should be maximally specified by the legislator so as not to become an excuse for the judge's exertion of autonomy.



Quite the same way that the judicial system has the right to sue the individuals by the society, the individuals have the right to enjoy the recommendations of lawyers to defend themselves and counteract the accusations. Act 35 of the Constitution states in this regard that “the parties in any courts are free to appoint a lawyer and if they cannot afford a lawyer they must be provided with the facilities of appointing and hiring a lawyer”.

- ***The Principle of Attending to the Complaints and Oppressions:***

According to the Act 158 of the Constitution, one duty of the head of judicature is the creation of required formations in the justice department so as to actualize the subjects outlined in the Act 156 of the Constitution, to wit the actualization of justice, trying and sentencing the complaints, oppressions, abuses, and so on. Also, based on the Act 167 of the Constitution, the judge is obliged to issue a verdict for every claim and s/he should not refrain from issuing a sentence otherwise s/he has committed an infringement hence indictable.

Substantive Rights and Judicature:

It is presumed that the citizens have basic individual and group rights before the government. These “ethical rights” have been transformed by the constitution to “legal rights”. These rights should bear the solid denotation of rights (to wit, “having rights” versus “being right”). In this case, the claim that the citizens should have the freedom of expression should mean that it is not proper conduct for the government to prevent them from doing so even when the government believes that the utterances made by the citizens are more harmful than less beneficial (Durkin, 2002, p.228).

Of course, the delicate and important point that has to be noted here is that the entire legal rights that are inserted in the Constitution do not represent the citizens’ rights before the government. For instance, under normal circumstances, the individuals have the right to drive through both sides of a two-way avenue; in such a state, if the Municipality Division of that district, due to some restrictions that are supposed to eventually serve general public interests, makes the street one-sided it has not performed an incorrect action. Another example is elections. Every individual has the right to based on his or her country’s constitution, for instance once every four years, take part in legislating congress representatives’ general elections; but, if the government, through its making of reformations in the constitution, according to what the law orders, shifts the period to, for example, three years or five years, it has not performed an incorrect (and of course unlawful) action (Zare’ei, 2008, p.40).

But, the set of the rights specified in the constitution that are called citizenship rights (like the right to freedom of expression), naturally, represent the people’s rights on the government in a solid sense and every legal system can be proud of itself in venerating these rights. With such a perspective, if an individual has the right to freely express his political opinions and enjoys the substantive right to freedom of expression in various political, economical and social-cultural topics then it will be improper if the government realize the illegalization of such a right as being in favor of the entire citizens. If the government prohibits and illegalizes such a right via establishing rules, then such an enactment of the law is per se another incorrect deed (Ibid, p.230).

In fact, an individual’s right on the government is that s/he has to be provided with his or her basic rights. This means that even the enactment of the regulations cannot influence the extant rights and this is of an extraordinary importance because the abovementioned denotation



determines a position that is to be held by every individual in cases pertinent to civil disobedience (Ibid, p.231).

It seems that, in regard of the citizenship rights, it can be stated that these rights are a collection of rights and liberties that are prerequisites of every individual's life. These rights include the right to live, personal freedom and security, the freedom of thoughts and conscience, freedom of religion, freedom of opinion and expression, the right to be equally treated by the law, the right to have access to a qualified judicial court and so forth and they are basically laid on the foundation of ethics and justice. These rights are the precedents of the citizenship rights actualization in a country.

The thing that is fetched of segregating the human rights from the citizenship rights in respect to the judicial security is that some examples of the judicial rights, explained earlier, as well, have both human rights aspects and citizenship rights dimensions; but, they can be followed by different outcomes in proportion to whether being considered a part of the human rights or citizenship rights. As a specimen, enjoyment of a fair trial, explained earlier, is an accepted issue in the global community and in many of the legal systems and it is conceptually seen by the majority of the communities as a fundamental human right; but, since the citizenship rights are bound to geographical borders, the rules and regulations of every society, in their specific meaning, pursue the establishment of order, security and justice. The right to have a fair trial and the conditions giving rise to the safeguarding and guaranteeing such a right should not be conceptualize so as to question the authority of such a right. In other words, the internal conditions should be in such a way that the entire society members are legally supplied with the right to have a fair trial based on the society-specific criteria and regulations. From this viewpoint, the judicial rights constitute a constellation of regulations whose main premise is laid in human rights regulations. To put it differently, the seminal premise of the judicial rights is the human rights and any of the judicial rights, as one of the fundamental and underlying human rights of the citizens, in a given community should be safeguarded and guaranteed based on the society-specific regulations and criteria. And, such a safeguarding and securing of the rights should not take place in a way that they expose the nature and the content of the aforementioned rights as well as their existential philosophy to any risk.

However, the safeguarding of judicial rights, meanwhile comforting the citizens in regard of their fundamental rights preservation, can create judicial security in the society so as ascertain the general public, more than before, of their other human and citizenship rights' examples that are not of the nature of judicial rights, including the right to freedom of expression, the right to enjoy proper jobs and so forth. This way, in fact, the safeguarding and securing of the examples of human and citizenship rights, more of a judicial nature, can bring about a state called judicial security and this state per se will be accompanied by the safeguarding of the other examples of human and citizenship rights.

The safeguarding of various examples of judicial rights as important aspects of the human and citizenship rights lay a considerable role in the guaranteeing of the other human and citizenship rights' examples. For example, if it was possible to place accusations on everyone and then know it the duty of the accused to prove his or her innocence, neither the courts nor the other qualified authorities could speak of the preservation of the nations' rights and the other liberties guaranteed in the constitution under such conditions (Zare'ei, 2008, p.42).



CONCLUSION:

From what was mentioned so far, it can be concluded that the judicial security and the judicial rights as pointed out herein are inter alia the aspects of the individual and collective rights and freedoms and citizenship rights. With such a presupposition, the right to have a lawyer and a translator, the right to have access to qualified judicial authorities and courts, the right to have public trial, the right to the forbiddance of torture, the right to the prohibition of autonomous allegation, the right to be tried before the jury, the freedom of press and freedom of expression in reporting the courts' discussions and negotiations, that are all of a more citizenship right nature and examples of the judicial rights can, in fact, safeguard the judicial justice and enable other citizenship rights and examples only if they are exercised properly.

In line with this, the thing that is of a far greater importance is the indiscriminative and proper performance of the country's judicial system parallel to the accomplishment of the foresaid goal because it is only in this case that the citizens' will have an optimal peace of the mind about their preservation of their legal rights.

If the judicial system of the country aims at safeguarding and defending the citizenship rights then subsequently there will come about an occasion that the entire rules, verdicts, institutions, organizations and the activists involved in the country's judicial sector can properly fulfill their assigned duties and tasks in a principled manner based on the law. In fact, the citizenship rights will be thoroughly observed and this is an undoubted right of every citizen. The more the judicature distances away from the fair judicial system standards then the more the society will be deprived of the judicial security and achieving the citizenship rights' examples.



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